No. 15184

In the United States Court of Appeals for the Ninth Circuit

JACQUES DE GORTER, AND SUZE C. DE GORTER, AS INDIVIDUALS AND AS CO-PARTNERS, TRADING AS PELTA FURS, PETITIONERS

v.

FEDERAL TRADE COMMISSION, RESPONDENT

ON PETITION TO REVIEW AN ORDER TO CEASE AND DESIST

BRIEF FOR RESPONDENT AND APPENDIX

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BRIEF FOR RESPONDENT

I. STATEMENT OF THE CASE

This case arises upon a petition for the review of and to set aside an order to cease and desist, issued by the Federal Trade Commission, respondent, in an administrative proceeding charging Jacques De Gorter and Suze C. De Gorter, as individuals and as co-partners trading as Pelta Furs, petitioners, with violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and also with violation of the Federal Trade Commission Act.[1]

[1] Pertinent provisions of the Fur Products Labeling Act, of the rules and regulations thereunder, and of the Federal Trade Commission Act are set forth in the appendix to this brief.

Petitioners' statement of the case is incomplete. We shall therefore restate the case, summarizing the allegations of the complaint under the heading of the Act to which they relate.

Fur Products Labeling Act [2]

The complaint (Par. 3, Tr. R. p. 4) alleged that since August 9, 1952 (the effective date of the Fur Act), petitioners "have introduced, sold, advertised, offered for sale, transported and distributed fur products in commerce" and "have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as 'commerce', 'fur', and 'fur products' are defined in the Fur Products Labeling Act"; and the rules and regulations prescribed thereunder.

The complaint (Pars. 5, 7, and 8, Tr. R. 5, 7–9) further alleged that petitioners falsely and deceptively advertised certain of the fur products by causing the dissemination, in commerce, of newspaper advertisements, inserted in the Los Angeles Examiner, Los Angeles Times, and Los Angeles Herald and Express, which were intended to aid, promote, and assist in the sale and offering for sale fur products, but which did not comply with the provisions of Section 5 (a) of the Fur Act and the prescribed rules and regulations thereunder; that by means of such advertisments, and through petitioners' acts, practices, and representa-

[2] Hereafter sometimes referred to as the Fur Act.

tions appearing on price tags affixed to their fur products, petitioners directly and by implication:

1. Falsely represented that the price of their fur products had been reduced, in violation of Rule 44 (a);

2. Falsely represented the amount of savings to be effectuated by purchasers of their fur products, in violation of Rule 44 (b) and Rule 44 (c);

3. Falsely represented the grade, quality, or value of certain fur products, in violation of Rule 44 (f);

4. Falsely represented that the fur products were from the stock of a business:

a. in state of liquidation, and

b. consolidated with that of a fur mink manufacturer;

the complaint further alleged that petitioners failed to maintain full and adequate records to support the pricing claims and representations appearing in the advertisements and on their price tags, in violation of Rule 44 (e).

The complaint (Par. 6, Tr. R. 7) further alleged that petitioners falsely and deceptively advertised certain of their fur products in violation of Section 5 (a) of the Fur Act and the prescribed rules and regulations thereunder, in that certain advertisements disseminated in commerce as aforesaid:

1. Failed to disclose the name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed by the rules and regulations;

2. Failed to disclose that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur; and

3. Failed to disclose the name of the country of origin of imported furs contained in such fur product.

The complaint (Pars. 9, 10, 11, and 12, Tr. R. 9–10) further alleged that petitioners misbranded certain of their fur products;

1. By falsely and deceptively identifying such fur products as "mink" on their labels attached thereto, in violation of Section 4 (1) of the Fur Products Labeling Act;

2. By not affixing thereto labels showing the information required by Section 4 (2) of the Fur Products Labeling Act and the rules and regulations;

3. By setting forth on the labels attached thereto the name of an animal other than the name of the animal producing the fur, in violation of Section 4 (3) of the Fur Products Labeling Act and the prescribed rules and regulations; and

4. Required information:

a. Was mingled on the labels with non-required information, in violation of Rule 29 (a);

b. Was not completely set forth on one side of the labels as required by Rule 29 (a);

c. Was set forth on labels in handwriting, in violation of Rule 29 (b); and

d. Was set forth on the labels in improper sequence, in violation of Rule 30.

The complaint (Pars. 13, 14, and 15, Tr. R. 10-11) further alleged that petitioners falsely and de-

ceptively invoiced certain of their fur products in that:

1. They were not invoiced as required by Section 5 (b) (1) of the Fur Act and in the manner and form prescribed by the rules and regulations;

2. The invoices furnished to purchasers set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 5 (b) (2) of the Fur Act and the prescribed rules and regulations;

3. Required information was set forth in abbreviated form, in violation of Rule 4; and

4. Did not contain an item number or mark assigned to fur products, in violation of Rule 40 (a).

Upon the basis of the above allegations, the complaint then charged (Par. 16, Tr. R. 11–12) that the acts and practices of petitioners were in violation of the Fur Act and of the prescribed rules and regulations, and constituted unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Federal Trade Commission Act

The complaint alleged that petitioners caused to be disseminated, by publication in newspapers, advertisements of their fur products. Typical statements and representations contained in such advertisements were set forth in the complaint,[3] and it was alleged (Comp. Pars. 18 and 20, Tr. R. 14, 15) that by their use and by the use of others similar thereto but not

[3] See Pars. 4, 5, 6, 7, 8, 17, and 19, Tr. R. 4–8, 12, and 15.

specifically set out therein, petitioners falsely represented: that they were discontinuing operations and going out of business, that they were selling their entire stock at distress prices, that their fur products could be purchased at, or for less than, the amount paid for them by petitioners, that the prices marked on the price tags were the usual prices for such products during normal course of business. Petitioners' practices, it was charged (Comp. Pars. 22 and 23, Tr. R. 16–17), tended to deceive the public, divert trade from their competitors, and constituted unfair and deceptive acts and practices and unfair methods of competition in violation of the Federal Trade Commission Act.

The complaint further alleged (Par. 21, Tr. R. 16) that petitioners in the course and conduct of their business were "engaged in interstate commerce, as 'commerce' is defined in the Federal Trade Commission Act" and "are in substantial competition in commerce with" others who are also engaged in the sale of fur products to the purchasing public.

In their answer, petitioners denied all material allegations of the complaint. With the issue thus joined, this matter regularly came on for hearings before one of the Hearing Examiners of the Commission. At the initial hearing, counsel for petitioners made the following stipulations (Tr. R. 73–74) on the record:

> 1. Petitioner Jacques De Gorter "has committed the acts alleged in Paragraph 6 of the complaint" but does not stipulate that such acts are false and misleading;

2. Petitioner has "committed the acts" alleged in Paragraphs 9, 10, 11, 12, 13, 14, and 15 of the complaint;

3. The facts alleged in Paragraph 21 of the complaint "are true and correct";

4. Petitioner Suze De Gorter has not committed any of the acts thus stipulated since January 31, 1954;

5. The Los Angeles Times and Los Angeles Examiner, newspapers in which petitioners have advertised their fur products have "a circulation outside of the State of California";

6. Petitioner Jacques De Gorter committed the acts alleged in Subsection (c) and Subsection (d) of Paragraph 5 of the complaint, in violation of Subsection (f) and Subsection (g) of Rule 44—reserving the right, however, to attack the legality of this Rule and all of its subsections; and

7. Advertisements placed by petitioners in the Los Angeles Times contain the language as set forth and alleged in Paragraph 17 of the complaint.

Upon the completion of the taking of evidence on behalf of all parties, the Examiner filed his initial decision containing his findings as to the facts, conclusions and order to cease and desist. Thereafter counsel supporting the complaint and counsel representing petitioners appealed to the Commission which, after hearing the matter upon briefs and oral argument, entered its decision on the 11th day of May, 1955, denied the appeal of petitioners (Tr. R. 67), vacated and set aside the initial decision of the Examiner (Tr. R. 67), and entered its own findings as

to the facts (Tr. R. 38–48), which accord with the allegations of the complaint as outlined above.

Based upon the facts found and set forth in Paragraphs 1 through 8 of its findings of facts (Tr. R. 39–48), the Commission concluded that through misbranding, false, misleading and deceptive statements, representations and advertising and false invoicing of their fur products, intended to aid, promote and assist in the sale of said products, petitioners had violated the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder; and that the use by petitioners of such acts and practices constituted unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Based upon the facts found and set forth in Paragraphs 9 and 10 of its findings of facts (Tr. R. 48–51) the Commission concluded that the use by petitioners of the false and misleading statements and representations appearing in their advertisements (CX's 12–16, Tr. R. 136–142) constituted unfair and deceptive acts and practices and unfair methods of competition in violation of the Federal Trade Commission Act.

Upon the basis of its findings and conclusions, the Commission entered its order to cease and desist (Tr. R. 52–57). Paragraphs A, B, and C thereof, and the subdivisions thereunder, are directed to prohibiting the acts and practices of petitioners which the Commission found were in violation of the Fur Act and the prescribed Rules and Regulations, and, the pe-

nultimate paragraph of the order to cease and desist (unlettered and unnumbered) is directed to prohibiting the acts and practices of petitioners which the Commission found were in violation of the Federal Trade Commission Act.

Petitioners thereafter timely filed their petition for the review of and to set aside the order to cease and desist.

II. CONTESTED ISSUES

In their brief filed in support of their appeal to the Commission from the initial decision of the Examiner, petitioners raised only the issues of (a) interstate commerce, and (b) the legality of Rule 44 of the Rules and Regulations under the Fur Products Labeling Act. In their statement of points (Tr. R. 153–154) these same two issues were again raised and in addition a new issue, viz: whether the complaint charged petitioners with violation of the Federal Trade Commission Act as well as with violation of the Fur Act.

In their brief (12–38) petitioners develop their argument under six points. Point I is the issue of interstate commerce. Points II and VI raise the question of the legality of Rule 44 of the Rules and Regulations under the Fur Act. Points III and IV present the question of whether the complaint charges violation of the Federal Trade Commission Act as well as a violation of the Fur Act—this is the issue not raised below. Point V is not an issue but a statement of the power of a Court of Appeals on the review of an order to cease and desist.

Since ordinarily Courts of Appeals do not give consideration to issues not raised below, *United States* v. *L. A. Tucker Truck Lines, Inc.,* 344 U. S. 33, 34–38 (1952); *Hormel* v. *Helvering,* 312 U. S. 552, 556 (1941); *Kittler* v. *Commissioner of Internal Revenue,* 196 F. 2d 822, 827 (C. A. 7, 1952), for the reason that failure to thus raise the issue deprives the Appellate Court of the benefit and assistance of a decision by the trier of the fact, *Helvering* v. *Tex-Penn Co.,* 300 U. S. 481, 498 (1937); and, since the power of the United States Courts of Appeals on the review of an order to cease and desist is not an issue here, Points III, IV, and V are not properly before this Court. We therefore believe that the issues can for clarity and conciseness be stated as:

1. Are petitioners engaged in interstate commerce?, and

2. Is Rule 44 of the Rules and Regulations under the Fur Products Labeling Act within the rule-making authority conferred upon the Commission by the Act?

III. ARGUMENT

Preliminary statement

The facts in this matter are not in dispute and the applicable principles of law are well settled. The Commission's findings as to the facts, if supported by evidence, are conclusive. The statute so provides.[4]

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[4] Federal Trade Commission Act, § 5 (c); 52 Stat. 113; 15 U. S. C. 45 (c); *Federal Trade Commission* v. *Standard Education Society, et al.*, 302 U. S. 112, 117 (1937).

This Court has often so held.[5] It is well settled that the "weight to be given to the facts and circumstances admitted, as well as the inferences reasonably to be drawn" therefrom are for the Commission, *Federal Trade Commission* v. *Pacific States Paper Trade Assn.,* 273 U. S. 52, 63 (1927), and the "possibility of drawing either of two inconsistent inferences from the evidence" does not prevent the Commission from drawing one of them, *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.,* 316 U. S. 105, 106 (1942).

It is also well settled that the Courts of Appeals must not "pick and choose bits of evidence to make findings of fact contrary to the findings of the Commission," *Federal Trade Commission* v. *Standard Education Society, et al.,* 302 U. S. 112, 117 (1937). Inferences of fact drawn by administrative agencies "may not be set aside upon judicial review because the Courts would have drawn a different inference," *National Labor Relations Board* v. *Southern Bell Telephone Co.,* 319 U. S. 50, 60 (1943); *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.,* 316 U. S. 105, 106–107 (1942).

The above applicable principles of law have not been limited or restricted by the Administrative

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[5] *Philip R. Park, Inc.* v. *Federal Trade Commission*, 136 F. 2d 428, 429 (C. A. 9, 1943); *American Medicinal Products, Inc.* v. *Federal Trade Commission*, 136 F. 2d 426 (C. A. 9, 1943); *Lane* v. *Federal Trade Commission*, 130 F. 2d 48, 50 (C. A. 9, 1941), cert. denied 314 U. S. 630 (1941); *Electro Thermal* v. *Federal Trade Commission*, 91 F. 2d 477, 479 (C. A. 9, 1937), cert. denied 302 U. S. 748.

Procedure Act. The Administrative Procedure Act (60 Stat. 243–244, 5 U. S. C. § 1009 (e)), provides that administrative agencies should make their findings on the whole record "taking into account contradictory evidence or evidence from which conflicting inferences could be drawn." In reviewing the decision of administrative agencies, the courts are to "consider the whole record." But "the requirement for canvassing 'the whole record' in order to ascertain substantiality" was not "intended to negative the functions of * * * those agencies presumably equipped or informed by experience to deal with the specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect. Nor does it mean that even as to matters not requiring expertise a court may displace [an agency's] choice between two fairly conflicting views, even though the courts would justifiably have made a different choice had the matter been before it *de novo.*" *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U. S. 474, 487–488 (1951).

The Supreme Court has also declared that the Commission was created with the "avowed purpose of resting the administrative functions committed to it" in a body of experts "specially competent to deal with them." *Humphrey's Executor* v. *United States,* 295 U. S. 602, 621, 625 (1935). It is "not the province of the Court to absorb the administrative functions to such an extent that the executive or legislative agencies become mere fact-finding bodies." *Gray* v. *Powell,* 314 U. S. 402, 412 (1941).

In a proceeding of this nature the power of this Court is not administrative but judicial, and "the range of issues open to review is narrow. Only questions affecting constitutional power, statutory authority and the basic prerequisites of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable," and "judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." *Dobson* v. *Commissioner of Internal Revenue,* 320 U. S. 489, 501 (1943).

When a Court of Appeals takes upon itself the fact-finding function of the Commission and picks and chooses bits of evidence to make findings contrary to those of the Commission, the Supreme Court has had to step in and remind the Court that their review power is limited, *Federal Trade Commission* v. *Standard Education Society, et al.,* 302 U. S. 112, 117 (1937), and they must guard against the danger of sliding from the narrow confines of law into the broader and more spacious domains of policy and of fact-finding, *Phelps-Dodge Corporation* v. *National Labor Relations Board,* 313 U. S. 177, 194 (1941).

This Court should also bear in mind that it should neither "substitute [its] own judgment" for that of the Commission, *Federal Security Administrator* v. *Quaker Oats Co.,* 318 U. S. 218, 227 (1943), nor undertake to advise the Commission how to discharge its functions." *Federal Power Commission* v. *Hope Natural Gas Co.,* 320 U. S. 591, 617–618 (1944).

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This brings us to a consideration of the two issues that are properly raised before this Court.

1. Petitioners are engaged in interstate commerce by the sale and distribution of their fur products

Petitioners' argument under this issue is such a classic example of begging the question, and their statement of the meaning of the plain and unambiguous language of the Act is so confusing and difficult to follow that we shall not attempt a detailed reply.

This is the first case involving the Fur Products Labeling Act to reach a Court of Appeals for review. At the outset, therefore, although the Commission did find that seven sales made by petitioners of their fur products were in interstate commerce and that "in procuring fur products from sources outside the State of California, and thereafter advertising and offering for sale in newspapers of interstate circulation, and then selling and shipping and delivering such fur products in commerce clearly brings their business activities within the concept of 'commerce' under the Fur Products Labeling Act" (Tr. R. 40), we desire to impress upon the Court that, unlike a proceeding under the Federal Trade Commission Act where interstate commerce is a jurisdictional issue, under the Fur Act it is not necessary to allege or establish that petitioners are engaged in the sale and distribution of their products in interstate commerce in order to acquire jurisdiction. Actually, under the facts in this case, the admitted advertisements of their fur products in interstate commerce and the admitted advertisements of their fur products which were made in

whole or in part of fur which had been shipped and received in commerce and which were admittedly misbranded, falsely and deceptively advertised and invoiced, gives the Federal Trade Commission jurisdiction of petitioners under the Fur Act even had petitioners not made any sale in interstate commerce.[6]

We shall therefore briefly point to the facts establishing violation by petitioners of the Fur Products Labeling Act and the pertinent rules and regulations thereunder and then to the facts which establish a violation of the Federal Trade Commission Act which does involve the question of interstate commerce.

Petitioners are engaged in the sale and distribution of fur products at their place of business in Los Angeles, California. They purchase 25% of their fur products from sources in New York City and the remaining from sources in Los Angeles. The fur products purchased in New York City are shipped to and received by petitioners in interstate commerce. Some of the fur products purchased by petitioners in Los Angeles were made from imported furs (skins). (Tr. R. 85–86)

Petitioners advertise their fur products in the Los Angeles Times and the Los Angeles Examiner—newspapers with a circulation outside of the State of California (Tr. R. 83). These advertisements contain the statements and representations set forth in Paragraph Seventeen of the complaint (Tr. R. 89).[7] Petitioners stipulated (Tr. R. 73–74) that they committed the acts and practices set forth in Paragraphs 6, 9, 10, 11,

[6] See subsections (a) and (b) of Section 3 of the Fur Products Labeling Act, Supp. Apdx. 57.

[7] See CX's 12–16, Tr. R. 136–142.

12, 13, 14, and 15 of the complaint (Tr. R. 7, 9–11). By this stipulation petitioners admitted that their advertisements in the aforesaid newspapers failed to set forth the information required by subsections (1), (2) and (6) of Section 5 (a) of the Fur Products Labeling Act and the rules and regulations prescribed.

Petitioners further stipulated that certain of such products so advertised were misbranded in violation of Sections 4 (1), 4 (2), and 4 (3) of the Fur Products Labeling Act; that certain of their fur products so advertised were misbranded in violation of the Fur Products Labeling Act in that the labels attached thereto violated Rules 29 (a), 29 (b), and 30 of the prescribed Rules and Regulations under the Fur Products Labeling Act; that certain of such fur products so advertised were falsely and deceptively invoiced since they were not invoiced as required under the provisions of Sections 5 (b) (1) and 5 (b) (2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder; that certain of their said products so advertised were not invoiced in accordance with the rules and regulations prescribed and were in violation of Rule 4 and Rule 40 (a) of the said rules and regulations.

By stipulation (Tr. R. 89) petitioners stated that they misrepresented the grade and quality of their fur products by use of illustrations in their advertisements depicting higher priced or more valuable products than actually were available for sale, in violation of Rule 44 (f); that they misrepresented that

such fur products so advertised were from a stock of business in the state of liquidation and from a stock of business consolidated with that of a famous mink manufacturer, in violation of Rule 44 (g) of the prescribed Rules and Regulations, and as alleged in Paragraphs 5 (c) (d) of the complaint.

By the above stipulations petitioners admitted that certain of their fur products purchased and received by them in interstate commerce and certain of their fur products purchased in Los Angeles which contained imported fur (skins that had been shipped and received in interstate commerce) were, by them, (1) misbranded in violation of Section 4 of the Fur Products Labeling Act and of Rule 29 and Rule 30 of the prescribed Rules and Regulations; and (2) falsely and deceptively invoiced in violation of subsection (1) and subsection (2) of Section 5 (b) of the Act and of Rule 4 and Rule 48 of the prescribed Rules.

Petitioners further admitted that in advertising such fur products in interstate commerce they (1) had violated subsection (f) and subsection (g) of Rule 44, and (2) had failed to comply with the requirements of subsections (1), (2) and (6) of Section 5 (a) of the Act. Section 5 (a) of the Act (Apdx. 57) in substance declares that any advertisement of a fur products which does not comply with the provisions of its subsections (1 through 6) "shall be considered to be false and deceptive advertising." Under the provisions of this Section, petitioners' failure to comply with its provisions, their advertisements of their fur products is by law declared to be false and deceptive.

Upon the basis of the above, the Commission found that, (setting forth in detail the manner in which), petitioners had misbranded, falsely and deceptively advertised and invoiced certain of their fur products in violation of Section 4, Section 5 (a) and Section 5 (b) of the Fur Products Labeling Act. The Commission also found that, (setting forth in detail the manner in which), petitioners had misrepresented prices and savings, misrepresented that certain of their fur products were from a business in liquidation and from a business consolidated with that of a famous mink manufacturer, and that petitioners failed to maintain adequate records in violation of Rules 4, 29, 30, 40, and 44, respectively (Pars. 4, 5, 6, 7, and 8 of Findings, Tr. R. 40–48).

Upon making these findings the provisions of subsections (a) and (b) of Section 3 of the Fur Products Labeling Act was brought into the picture. Insofar as relevant here subsection (a) of Section 3 (Apdx. 57) declares that the advertising in interstate commerce "of any fur product which is misbranded or falsely or deceptively advertised or invoiced * * * is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act." Insofar as here relevant, subsection (b) of Section 3 (Apdx. 57) declares that the advertising "of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is misbranded or falsely or deceptively advertised or invoiced, * * * is unlawful and shall be an unfair method of competition, and an unfair or deceptive act

or practice, in commerce under the Federal Trade Commission Act."

Upon the authority of those subsections of Section 3 of the Act, which made petitioners' admitted acts and practices unlawful, the Commission concluded that—

> this proceeding is in the public interest for the protection of consumers and others within the purpose and intent of the Fur Products Labeling Act; that respondents through misbranding, false, misleading and deceptive statements, representations and advertising, and false invoicing of fur products as covered, in Paragraphs 1–8, inclusive, intended to, and did, aid, promote and assist, directly or indirectly in the sale of said fur products; and that the use of the aforesaid practices by respondents has been and is unlawful within the meaning of the Fur Products Labeling Act and of the rules and regulations promulgated thereunder and constitute unfair methods of competition, and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

It will be noted that this conclusion of the Commission, and the facts upon which such conclusion is based, does not rest upon any finding of any sale made by petitioners nor upon any finding that petitioners are engaged in interstate commerce in the sale and distribution of their fur products. The Commission's conclusion is based solely upon (1) petitioners' interstate advertisements of a fur product which is misbranded and falsely advertised and invoiced, and (2) upon petitioners' advertisements (not

necessarily interstate advertisements) of a fur product containing fur which has been shipped and received in interstate commerce, and which is misbranded or falsely and deceptively advertised or invoiced.

Upon the basis of the Commission's findings and its conclusions in this phase of the case, the Commission inserted in its order to cease and desist paragraphs A, B, and C and the various subdivisions thereunder directing petitioners to discontinue the acts and practices which were unlawful under the Fur Products Labeling Act.

It is, therefore, submitted that the question of whether petitioners in their sale and distribution of their products are engaged in a course of commerce, as "commerce" is defined under the Federal Trade Commission Act, is not an issue in this phase of this case.

Now, let us examine the facts upon which the Commission based its findings that the petitioners were engaged in a course of commerce, as "commerce" is defined in the Federal Trade Commission Act (Tr. R. 40).

Petitioners stipulated (Tr. R. 74) that in the course of their business they were in substantial competition in commerce with others engaged in the sale of fur products to the purchasing public, as alleged in Paragraph 21 of the complaint (Tr. R. 16).

Petitioner Jacques De Gorter testified that approximately 25% of the fur products advertised and sold by petitioners were purchased from sources in New York City and were shipped to and received by pe-

tioners at their place of business in Los Angeles. He said that petitioners advertise these fur products in the Los Angeles Times and Los Angeles Herald and stipulated that these newspapers had a circulation outside of the State of California (Tr. R. 83). Petitioners stipulated (Tr. R. 89) that these advertisements contained the statements and representations set forth in Paragraph Seventeen of the complaint (Tr. R. 16) and Jaques De Gorter identified (Tr. R. 102, 111, 112, 113, 114) Commission's Exhibits 12 through 16 as petitioners' advertisements of their fur products.[8] Jacques De Gorter identified Commission's Exhibits 1 through 8 as being sales slips of fur products sold and shipped by petitioners to purchasers outside of the State of California (Tr. R. 79). He stated that in addition to these interstate sales petitioners had also sold and shipped fur products c. o. d. to other purchasers outside of the State of California. He said that the State of California has a sales tax which is collected on all sales made within the State but that petitioners did not collect this sales tax on the sales of their fur products as shown by Commission's Exhibits 1 through 8 or on the sales of fur products made and shipped by petitioners c. o. d. to purchasers outside the State of California (Tr. R. 80–82).

Based upon the interstate sales made by petitioners as shown by Commission's Exhibits 1 through 8 and upon the testimony of Jacques De Gorter (Tr. R. 79–82) in reference thereto the Commission found

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[8] See these exhibits, Tr. R. 136–142.

(Tr. R. 40) that although such sales "represent only a small proportion of all" sales made by petitioners during the months of September, October, November, and December of 1953, "they are not mere isolated instances, but constitute a course of trade in commerce among and between the various states of the United States, as 'commerce' is defined in the Federal Trade Commission Act."

Based upon the stipulated and admitted facts as hereinabove set forth and upon the testimony of Jacques De Gorter (Tr. R. 90–105, 109–135) in reference to the statements and representations appearing in petitioners' advertisements and in reference to the method and manner used by petitioners in pricing their fur products, the Commission found that petitioners' acts and practices as set forth in Paragraphs 9 and 10 of its findings as to the fact (Tr. R. 48–51) were false, misleading and deceptive. The Commission concluded (Tr. R. 51–52) by the use of such false, misleading and deceptive acts and practices petitioners had violated the Federal Trade Commission Act and included in the order to cease and desist a paragraph directing petitioners to discontinue such false and deceptive acts and practices.[9]

We submit that the conclusion of the Commission that petitioners have violated the Federal Trade Commission Act and the inclusion by the Commission in its order to cease and desist a paragraph directing

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[9] See transcript of Record 57—the first unnumbered paragraph beginning on that page.

petitioners to discontinue such violation is supported by substantial evidence.

Petitioner's entire argument under this phase of the case (Br. 12–21) relates solely to the provisions of the Fur Products Labeling Act. We have attempted to demonstrate, insofar as the Commission's findings and order relate to the allegations of the complaint charging violation of the Fur Products Labeling Act and the prescribed rules and regulations thereunder, they are not based on any sales made by petitioners in interstate commerce but upon acts and practices of petitioners, other than sales, which the Act declares to be unlawful.

Petitioners' argument here is bottomed upon the "goods come to rest" theory—a theory that is based upon the entire absence of any sales made in interstate commerce of goods after they complete their interstate journey and come to rest in the State of their destination—citing (Br. 12) several cases in support thereof. This argument of petitioners is wholly irrelevant here and this case can easily be distinguished from those which petitioners rely upon. The Fur Act removes "furs" and "fur products" from the effect of the "goods come to rest" principle. In addition to this, the record establishes the fact that petitioners did sell some of their fur products in interstate commerce and this distinguishes the instant matter from those decisions in which the "goods come to rest" doctrine was applied and removes this case from the application of that doctrine.

The unambiguous language of subsections (a) and (b) of Section 3 of the Act specifically gives the Commission jurisdiction over certain Acts and practices therein declared unlawful as they relate to fur products which have ended their interstate journey. That it was the intention of Congress to give the Commission jurisdiction over these products after they came to rest in the State of their destination is clearly shown by the statement of Senator Lodge. The Senator proposed certain amendments to this Act, then before the Senate for consideration, and caused to be printed in the body of the Record a statement descriptive of his proposed amendments in which the following in reference to Section 3 (b) of the Act appears:

> The proposed amendment would not weaken in the slightest the protection afforded the consumer against misbranding and false advertising. The retailer would continue to be bound by the affirmative disclosure requirements of the proposed act. The amendment would not deprive the Federal Trade Commission of jurisdiction over the garments involved. Section 3 (b) offers jurisdiction on every fur product made in whole or in part of fur which has been shipped or received in commerce. This means that such a fur product remains subject to all of the provisions of the proposed law and to the jurisdiction of the Commission up to the time it reaches the ultimate consumer, irrespective of whether or not such garments pass in commerce when sold by the retailer.

> Because it will afford the retailer a very important right without weakening the underlying purpose of the bill, it is respectfully urged that the proposed amendment be incorporated into the fur-labeling bill. (Cong., Rec., February 22, 1951, 82d Cong., 1st sess., p. 1510).[10]

Representative O'Hara, sponsor of the Fur Act in the House, at a hearing before the Committee on Interstate and Foreign Commerce, House of Representatives, 82d Congress, 1st session, on April 17, 1951, stated:

> The Federal Trade Commission has endeavored to correct some of these practices. However, these practices are so widespread that enforcement by the Federal Trade Commission, through its normal processes, is exceedingly difficult. Furthermore, such practices are engaged in frequently by retailers who are beyond the reach of the Commission because they are engaged in intrastate rather than interstate commerce. Therefore, specific legislation on this subject is considered necessary. (Printed Report of hearings on H. R. 2321 before the Committee on Interstate and Foreign Commerce, House of Representatives, 82d Congress, 1st session, pp. 12–13).[11]

And at a hearing before the same Committee on April 20, 1950, a representative of the Commission made this statement:

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[10] See also Report of Senate Committee on Interstate and Foreign Commerce (S. 508), Cal. No. 80, Report No. 78; Report of House Committee on Interstate and Foreign Commerce (H. R. 2321, June 11, 1951, Report No. 546).

[11] He made the same statement on the floor of the House, Cong. Rec., June 18, 1951, p. 6850.

> In the first place, the legislation is needed be-
> cause the principal evil finds expression down
> in the local sale—that is the final sale to the
> ultimate consumer—which, under ordinary gen-
> eral provisions of law, is beyond the reach of
> the Federal Trade Commission because of a lack
> of interstate commerce. (Printed Report of
> hearings on H. R. 2321 before the Committee on
> Interstate and Foreign Commerce, House of
> Representatives, 82d Congress, 1st session, p.
> 160).

We here note that relying on the "goods come to rest" decisions, petitioners state (Br. 20), "it was not possible, constitutionally, for the Congress to provide that a 'fur product' shipped and received in commerce continue to be the subject of interstate commerce after its receipt by petitioners and its being commingled with other fur products in petitioners' place of business." Petitioners here appear to be raising the question of constitutionality of the Fur Products Labeling Act. Except for their reference to the decisions of the Courts under the "goods come to rest" doctrine, which we have just above discussed, petitioners fail to point out in what respects the Act is unconstitutional, neither do they cite any authority in support of their contentions other than the "goods come to rest" cases. It is well established that the burden of establishing the unconstitutionality of a statute rests on him who assails it. This principle of judicial decision has long been emphasized and followed by the Supreme Court of the United States *Metropolitan Casualty Insurance Co.* v. *Brownell Receiver,* 294 U. S. 580, 584 (1934).

The evils sought to be removed by the Fur Act were misbranding, false and deceptive advertising, and invoicing of fur products. These evils were rampant in the sale of fur products in intrastate commerce, against which the power of the Commission under the Federal Trade Commission Act was impotent. These evils were pollutiing the channels of interstate commerce and occurring in almost every State. The welfare and economy of the Nation was being seriously affected. Congress had the power under the commerce clause to attempt to remove these evils by enacting the Fur Act. In *United States* v. *Wrightman Dairy Co.,* 315 U. S. 110 (1942)—a case involving the authority of the Secretary of Agriculture under the Agricultural Marketing Agreement Act of June 3, 1937, 50 Stat. 246, 7 U. S. C. 608 (c), to regulate the price of milk produced and sold intrastate—Mr. Chief Justice Stone, speaking for the Court, said at page 118:

> * * * Congress plainly has power to regulate the price of milk distributed through the medium of interstate commerce, *United States* v. *Rock Royal Cooperative, supra,* and it possesses every power needed to make that regulation effective. The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce.

See *McCulloch* v. *Maryland,* 4 Wheat. 316, 421; *United States* v. *Ferger,* 250 U. S. 199; *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 221; *United States* v. *Darby,* 312 U. S. 100, 118–19. The power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. *Gibbons* v. *Ogden,* 9 Wheat. 1, 196. It follows that no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress. Hence the reach of that power extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power.

Familiar examples are the Congressional power over commodities inextricably commingled, some of which are moving interstate and some intrastate, see *United States* v. *New York Central R. Co.,* 272 U. S. 457, 464; the power to regulate safety appliances on railroad cars, whether moving interstate or intrastate, *Southern Ry. Co.* v. *United States,* 222 U. S. 20; the power to control intrastate rates of a common carrier which affect adversely federal regulation of the performance of its functions as an interstate carrier, *Shreveport Case,* 234 U. S. 342; *Railroad Commission of Wisconsin* v. *Chicago, B. & Q. R. Co.,* 257 U. S. 563; the regulation by the Tobacco Inspection Act of tobacco produced intrastate and destined to consumers within the state as well as without, *Currin* v. *Wallace,* 306 U. S. 1; the regulation of both interstate and intrastate marketing of

tobacco under the Agricultural Adjustment Act, *Mulford* v. *Smith,* 307 U. S. 38, 47; and see cases collected and discussed in *United States* v. *Darby,* 312 U. S. 100, 118–125.

And again at page 121:

It is no answer to suggest, as does respondent, that the federal power to regulate intrastate transactions is limited to those who are engaged also in interstate commerce. The injury, and hence the power, does not depend upon the fortuitous circumstance that the particular persons conducting the intrastate activities is, or not, also engaged in interstate commerce. See *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1; *Stevens Co.* v. *Foster & Kleiser Co., supra.* It is the effect upon interstate commerce or upon the exercise of the power to regulate it, not the source of the injury which is the criterion of Congressional power. *Second, Employers' Liability Cases,* 223 U. S. 1, 51. We conclude that the national power to regulate the price of milk moving interstate into the Chicago, Illinois, marketing area, extends to such control over intrastate transactions there as is necessary and appropriate to make the regulation of the interstate commerce effective; and that it includes authority to make like regulations for the marketing of intrastate milk whose sale and competition with the interstate milk affects its price structure so as in turn to affect adversely the Congressional regulation.

Again, in *North America Company* v. *Securities & Exchange Commission,* 327 U. S. 686 (1946)—a case involving orders entered by the Securities & Exchange Commission requiring North American to sever relationship with certain of its other properties—the Su-

preme Court said, speaking through Mr. Justice Black, at page 705:

> This broad commerce clause does not operate so as to render the nation powerless to defend itself against economic forces that Congress decrees inimical or destructive of the national economy. Rather it is an affirmative power commensurate with the national needs. It is unrestricted by contrary state laws or private contracts. And in using this great power, Congress is not bound by technical legal conceptions. Commerce itself is an intensely practical matter. *Swift & Co.* v. *United States,* 196 U. S. 375, 398. To deal with it effectively, Congress must be able to act in terms of economic and financial realities. The commerce clause gives it authority so to act.
>
> We need not attempt here to draw the outer limits of this plenary power. It is sufficient to reiterate the well-settled principle that Congress may impose relevant conditions and requirements on those who use the channels of interstate commerce in order that those channels will not become the means of promoting or spreading evil, whether of a physical, moral or economic nature. *Brooks* v. *United States,* 267 U. S. 432, 436–437. This power permits Congress to attack an evil directly at its source, provided that the evil bears a substantial relationship to interstate commerce. Congress thus has power to make direct assault upon such economic evils as those relating to labor relations, *Labor Board* v. *Jones & Laughlin Corp.,* 301 U. S. 1; *Polish Alliance* v. *Labor Board,* 322 U. S. 643; to wages and hours, *United*

States v. *Darby, supra;* to market transactions, *Stafford* v. *Wallace,* 258 U. S. 495; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1; and to monopolistic practices, *Northern Securities Co.* v. *United tSates, supra.* The fact that an evil may involve a corporation's financial practices, its business structure or its security portfolio does not detract from the power of Congress under the commerce clause to promulgate rules in order to destroy that evil. Once it is established that the evil concerns or affects commerce in more states than one, Congress may act. "The framers of the Constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject matter specifically committed to its charge." *In re Rahrer,* 140 U. S. 545, 562.

Congress in § 11 (b) (1) of the Public Utility Holding Company Act was concerned with the economic evils resulting from uncoordinated and unintegrated public utility holding company systems. These evils were found to be polluting the channels of interstate commerce and to take the form of transactions occurring in and concerning more states than one. Congress also found that the national welfare was thereby harmed, as well as the interests of investors and consumers. These evils, moreover, were traceable in large part to the nature and extent of the securities owned by the holding companies. Congress therefore had power under the commerce clause to attempt to remove those evils by ordering the holding companies to divest themselves of the securities that made such evils possible.

That Congress has the power to enact laws which affect articles held for sale after having completed their journey in interstate commerce has been decided by the United States Supreme Court in *United States* v. *Sullivan,* 332 U. S. 689 (1947). This case involves Section 301 (k) of the Federal Food, Drug and Cosmetic Act of 1938, which prohibits "the doing of any * * * act with respect to, a * * * drug * * * if such act is done while such article is held for sale after shipment in interstate commerce and results in such article being misbranded."

Briefly, the facts in this case are as follows:

A laboratory had shipped in interstate commerce to a consignee in Atlanta, Georgia, a number of bottles each containing 1,000 sulfathiazole tablets. These bottles were properly labeled as required by Section 502 (f) (1) and (2) of the Act. A druggist purchased one of these properly labeled bottles from the consignee in Atlanta, transferred the bottle to his store in Columbus, Georgia, and there held the tablets for resale. On two occasions, 12 tablets were removed from the properly labeled and branded bottle, placed in pill boxes and sold to customers. The pill boxes were labeled "sulfathiozole" but did not contain the statutorily required adequate directions for use or warnings of danger. The druggist was indicted, convicted in the Federal District Court (67 F. Supp. 192) of violating Section 301 (k) of the Act. The Court of Appeals reversed (161 F. 2d 629) and upon certiorari the Supreme Court reversed the United States Court of Appeals.

After discussing the narrow interpretation which the Court of Appeals thought necessary to give to Section 301 (k) and noting the cases relied upon by the Court,[12] the Supreme Court said at page 693:

> A restrictive interpretation should not be given a statute merely because Congress has chosen to depart from custom or because giving effect to the express language employed by Congress might require a court to face a constitutional question. And none of the foregoing cases, nor any other on which they relied, authorizes a court in interpreting a statute to depart from its clear meaning. When it is reasonably plain that Congress meant its Act to prohibit certain conduct, no one of the above references justifies a distortion of the congressional purpose, not even if the clearly correct purpose makes marked deviations from custom or leads inevitably to a holding of constitutional invalidity. Although criminal statutes must be so precise and unambiguous that the ordinary person can know how to avoid unlawful conduct, see *Kraus & Bros., Inc.,* v. *United States,* 327 U. S. 614, 621–622, even in determining whether such statutes meet that test, they should be given their fair meaning in accord with the evident intent of Congress. *United States* v. *Raynor,* 302 U. S. 540, 552.

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[12] *Federal Trade Commission v. Bunte Bros.*, 212 U. S. 349; *Labor Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 30; and *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495 This last case is among the cases relied upon and cited by petitioners in the instant matter. (Br. 12, 19).

The Court went on further to say, at page 695:

> When we seek the meaning of § 301 (k) from its language we find that the offense it creates and which is here charged requires the doing of some act with respect to a drug (1) which results in its being misbranded, (2) while the article is held for sale "after shipment in interstate commerce." Respondent has not seriously contended that the "misbranded" portion of § 301 (k) is ambiguous. Section 502 (f), as has been seen, provides that a drug is misbranded unless the labeling contains adequate directions and adequate warnings. The labeling here did not contain the information which § 502 (f) requires. There is a suggestion here that, although alteration, mutilation, destruction, or obliteration of the bottle label would have been a "misbranding," transferring the pills to non-branded boxes would not have been, so long as the labeling on the empty bottle was not disturbed. Such an argument cannot be so sustained. For the chief purpose of forbidding the destruction of the label is to keep it intact for the information and protection of the consumer. That purpose would be frustrated when the pills the consumer buys are not labeled as required, whether the label has been torn from the original container or the pills have been transferred from it to a non-labeled one. We find no ambiguity in the misbranding language of the Act.
>
> * * * * *
>
> Given the meaning that we have found the literal language of § 301 (k) to have, it is thoroughly consistent with the general aims and purposes of the Act. For the Act as a

whole was designed primarily to protect consumers from dangerous products. This Court so recognized in *United States* v. *Dotterweich,* 320 U. S. 277, 282, after reviewing the House and Senate Committee Reports on the bill that became law. Its purpose was to safeguard the consumer by applying the Act to articles from the moment of their introduction into interstate commerce all the way to the moment of their delivery to the ultimate consumer. Section 301 (a) forbids the "introduction or delivery for introduction into interstate commerce" of misbranded or adulterated drugs; § 301 (b) forbids the misbranding or adulteration of drugs while "in interstate commerce" of any misbranded or adulterated drug, and "the delivery or proffered delivery thereof for pay or otherwise." But these three paragraphs alone would not supply protection all the way to the consumer. The words of paragraph (k) "while such article is held for sale after shipment in interstate commerce" apparently were designed to fill this gap and to extend the Act's coverage to every article that had gone through interstate commerce until it finally reached the ultimate consumer. Doubtless it was this purpose to insure federal protection until the very moment the articles passed into the hands of the consumer by way of an intrastate transaction that moved the House Committee on Interstate and Foreign Commerce to report on this section of the Act as follows: "In order to extend the protection of consumers contemplated by the law to the full extent constitutionally possible, paragraph (k) has been inserted prohibiting the changing of labels so

as to misbrand articles held for sale after interstate shipment." We hold that § 301 (k) prohibits the misbranding charged in the information.

The decision of the Supreme Court in the *Sullivan* case is controlling in the instant matter and this Court could very well sustain the order to cease and desist under the principles of law therein discussed.

The primary purpose of the Fur Products Labeling Act, just as is the purpose of the Food and Drug Act, is to protect the ultimate consumer from acts and practices which Congress determined were detrimental to the public welfare. Section 3 (a) and (b) and Section 4 and Section 5 of the Fur Products Labeling Act are analogous, in their particular field, to the Sections of the Food and Drug Act discussed by the Supreme Court in the *Sullivan* case. Both acts make unlawful certain acts and practices when committed in the sale to the ultimate consumer of a product which was at one time transported in interstate commerce.

The power may be exercised, as it has in this case, to protect the public from unfair methods of competition and unfair and deceptive acts and practices by the use of false, deceptive and misleading advertisements either in interstate commerce or intrastate commerce. The method selected by Congress to effect this purpose is a matter of legislative discretion not subject to attack if reasonably related to the end sought. Congress could have elected to absolutely prohibit the shipment in commerce of fur or fur

products, and the Courts would not question the method selected.

Congress may exercise its power generally without regard to the effect of forbidden acts in particular cases, *Great Atlantic & Pacific Tea Co.* v. *Federal Trade Commission*, 106 F. 2d 667, 677–678 (C. A. 3, 1939), cert. denied 308 U. S. 625 (1940). Congress having the right to put a stop to a particular evil, may enact such broad prohibitions as it deems necessary to accomplish its purpose, *Carolene Products Co.* v. *United States,* 323 U. S. 18, 23, 27–32 (1944); *Jacob Ruppert* v. *Caffey,* 251 U. S. 264, 282–283 (1920).

This Court has held that there is no "constitutional right to disseminate false advertisements by the United States mails or by any means in commerce, or by any means for the purpose of inducing or which is likely to induce directly or indirectly" the purchase of a product in commerce. *American Medicinal Products* v. *Federal Trade Commission*, 136 F. 2d 426, 427 (C. A. 9, 1943). This decision, protecting the interstate purchaser of any product from false, misleading and deceptive advertising, was made under the provisions of the Federal Trade Commission Act. Congress in enacting the Fur Products Labeling Act has extended this same protection, under certain stated conditions, to the purchaser of fur products at the local level.

The evil which existed in interstate commerce and which Congress attempted to control by enacting the Federal Trade Commission Act may, if used in intrastate, operate directly to restrain interstate commerce

and affect the welfare and economy of the nation, thus undoing what Congress hoped to accomplish by the Federal Trade Commission Act. Due to the widespread evil that existed in intrastate commerce of "furs" and "fur products," Congress deemed it essentially necessary to outlaw the evil by enacting the Fur Act in order to protect interstate commerce. "In interpreting statutes of this character, and, generally any legislation which aims to carry into effect the plenary powers of the Congress to regulate commerce, it is accepted constitutional doctrine that the power to control is not destroyed by the mere fact that purely intrastate activities may also be reached," *United States* v. *Standard Oil Co. of California, et al.*, 78 F. Supp. 850, 873 (D. C. S. D. Cal. Cent. Div., 1948).

It is therefore submitted that under its power to regulate commerce, Congress can, when it deems it necessary, reach down to the local level and make unlawful certain acts and practices which affect interstate commerce and are detrimental to the welfare and economy of the nation.

This brings us to a consideration of the legality of Rule 44 of the Rules and Regulations under the Fur Act.

2. Rule 44 of the Rules and Regulations under the Fur Products Labeling Act is within the rule-making authority conferred upon the Commission by the Act

Relying (Br. 22–28) on a strict application of the *ejusdem generes* principle of statutory interpretation when applied to Section 5 (a) (5) of the Fur Act and citing (Br. 12) *State* v. *Thomas,* 232 P. 2d 87 (S. Ct.

Washington, 1950), and *Smith* v. *Higginbothom,* 48 A. 2d 754 (C. A. Md., 1946)—erroneously cited as 28 A. 2d—petitioners contend that in promulgating Rule 44 of the Rules and Regulations under the Fur Products Labeling Act, the Commission exceeded the authority conferred upon it by the Act. In the argument here petitioners ignore entirely other principles of statutory interpretation which, under certain circumstances, makes ineffective and inoperative the rule of *ejusdem generes.*

Ejusdem generes literally means the same kind of species. Where in a statute general words follow designation of a particular subject or class, the meaning of the general words are ordinarily presumed to be, and construed as, restricted by the particular designation and as including only things and persons of the same kind, class, character or nature as those specifically enumerated.

In *Danciger* v. *Cooley,* 248 U. S. 319 (1919), the Court said, at page 326:

> The rule that where particular words of description are followed by general terms the latter will be regarded as applicable only to persons or things of a like class is invoked in this connection, but it is far from being of universal application, and never is applied when to do so will give to a statute an operation different from that intended by the body enacting it. Its proper office is to give effect to the true intention of that body, not to defeat it. *United States* v. *Mescall,* 215 U. S. 26.

And in *Texas, et al.* v. *United States, et al.,* 292 U. S. 522, 534 (1934), the Supreme Court pointed out that

> The rule of *ejusdem generes* is applied as an aid in ascertaining the intention of the legislation, and not to subvert it when ascertained.

Again, in *United States* v. *Gilliland,* 312 U. S. 86, 92 (1941), the Court said:

> The rule of *ejusdem generes* is a familiar and useful one in interpreting words by the association in which they are found, but it gives no warrant for narrowing alternative provisions which the legislature has adopted with the purpose of affording safeguards.

In *Bridges* v. *United States,* 199 Fd. 2d 811 (C. A. 9, 1952)—a case in which the appellants sought to have the rule of *ejusdem generes* applied to certain provisions of the Nationality Act of 1940—this Court said at page 820:

> We pass this contention by quoting *United States* v. *Gilliland,* 1941, 312 U. S. 86, 92, 61 S. Ct. 518, 522, 85 L. Ed. 598: "The rule of '*ejusdem generes*' is applied as an aid in ascertaining the intention of the legislature, not to subvert it when ascertained."

The primary rule of statutory interpretation is to first ascertain the legislative intent—in fact, it has been frequently stated, in effect, that the intention of the legislature constitutes the law and is "the vital, heart, soul and essence of the law, and the guiding star in the interpretation thereof."

In the interpretation of a statute the legislative will or intent is the all important and controlling

factor. *United States* v. *N. E. Rosenblum Truck Line,* 315 U. S. 50, 53 (1941); *United States* v. *Cooper Corporation, et al.,* 312 U. S. 600, 605, (1941). Once this has been ascertained, the Courts should make such intention effective to its fullest degree and not adopt a construction that would nullify or defeat the intention of the legislature. *Helvering* v. *Stockholmes Enskilva Bank,* 293 U. S. 284.

The Supreme Court has also held that a statute should be read in such a way as to carry out the Congressional intention, despite a contrary literal meaning, especially in order to avoid unconstitutionality, *Markham* v. *Cabell,* 326 U. S. 404, 409 (1945), and "if the plain meaning of the words used in a statute produces an unreasonable, absurd or futile result, plainly at variance with the policy of the legislation as a whole, the Courts may follow the purpose of the statute rather than its literal words." *R. E. Schanzer, Inc.* v. *Bowles, Price Administrator,* 141 F. 2d 262, 264 (U. S. Emergency C. A. 1944).

The principle of this legislation is not new. It is part of the growing body of legislation designed to protect the consuming public in the fields of foods, drugs, cosmetics, weights, measures and clothing.

The stated purpose of the Fur Act is: "AN ACT To protect consumers and others against misbranding, false advertising, and false invoicing of fur products and furs." The phrase "false advertising" is not qualified and envisons and encompasses all types of false advertisements of fur products and furs.

Section 5 (a) is under the title "FALSE ADVERTISING AND INVOICING OF FUR PRODUCTS AND FURS." Here also the phrase "false advertising" is not qualified and it also encompasses and envisions all types of false advertisements of fur products and furs.

Section 5 (a) declares:

> For the purposes of this Act [13] a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such product or fur—
>
> * * * * *

which "does not show" the matters and facts set forth in subsections (1), (2), (3), (4), and (6). These sections deal with the physical and zoological characteristics of fur products and furs.

Subsection (5) of Section 5 (a) is as follows:

> or contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur.

Under the provisions of Section 8 (b) of the Act, the Commission, relying upon the language "or contains any form of misrepresentation or deception, directly or by implication with respect to such fur

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[13] One of the purposes stated by Congress being to protect the consumer from all forms of false advertising of fur products and furs.

product or fur" appearing in subsection (5) of Section 5 (a), promulgated Rule 44 of the Rules and Regulations under the Fur Products Labeling Act. This Rule is concerned with prices and values and is entitled "Misrepresentation of Prices."

The specific question, therefore, here to be determined is, Did Congress in passing the Fur Act intend to make unlawful all false and misleading advertisements concerned with prices and values of fur products, even though the language used in the sections relating to false advertisements of fur products or furs (Section 5 (a)) does not specifically mention prices or values? In examining the language used in Section 5 (a), particularly in subsection (5) of this Section, to ascertain and determine if Congress intended to include false advertising as to prices and values, it is interesting to note that in the *Higginbothom* case (48 A. 2d 754), cited by petitioners in support of the strict application of the principle of *ejusdem generes,* the Court said at page 759:

> It is a cardinal rule of statutory construction that the intention of the legislature should be sought in the first instance in the words of the statute. Where the language is clear and free from doubt, the Court has no power to evade it by forced and unreasonable construction in order to assert its own ideas of policy or morals. The Court has no right to sit in judgment upon the wisdom of the legislature, to pass upon the expediency of the law. * * * the meaning of the plainest words in the statute may be controlled by the context. If a word is fairly susceptible of more than one inter-

> pretation, the Court should seek the legislative intention by considering the cause or necessity of enactment and the mischief it was intended to remedy and adopt the meaning which will harmonize with the general scheme of the statute and assist in carrying out the legislative purpose. * * * The real intent when ascertained, will also prevail over the literal sense of the language, because both the canons of verbal criticism and the rules of grammatical construction must alike yield to the manifest spirit and intent of an enactment.

Let us now examine the language and the grammatical construction of subsection (5) of Section 5 (a) in relation to the other subsections of Section 5 (a) and see if Congress intended that a fur product or fur shall also "be falsely or deceptively advertised" if the advertisement contains any misrepresentations as to prices or values.

It will be noted that subsections (1) through (4) and subsection (6) have to do with the zoological or physical characteristics of fur products and furs and declares that an advertisement which "does not show" those characteristics is considered to be falsely or deceptively advertised. The subject matter of subsection (5) is entirely different from that of the other subsections. It is concerned, not with failure to disclose, but with whether such advertising contains something other than the matters required to be disclosed by the other subsections. Subsection (5) represents an independent thought on the part of Congress and is particularly significant in relation to the question here raised. This subject matter is not

related to or part of the class or things (physical or zoological characteristics of fur products or furs), the subject matter of the other subsections of this Section. The two phrases "name of animal or animals, etc." and "any form of misrepresentation, etc." definitely remove this subsection from the class of things specified in the other subsections. The issue here raised therefore is concerned only with interpreting the meaning of the language used in subsection (5) of Section 5 (a) separate and apart from, and not in relation to the other subsections of Section 5 (a).

Section 5 (a) contains an incomplete conditional or "if" clause, viz, "if any advertisements, representations, etc." When read with any one of the six numbered subsections immediately following, this clause becomes grammatically complete. Each one of the subsections under Section 5 (a) independently provides a predicate for the incomplete clause in Section 5 (a). The predicate supplied by subsection (5) is a *compound,* made up of two separate parts, namely, (1) "contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection" and (2) "contains any form of misrepresentation or deception directly or by implication, with respect to such fur product or fur," whose equality of rank within the thought expressed by the complete clause is signified by the co-ordinating conjunction "or," which connects them, and the fact that the word "contains" is used twice, as a verb for each of these two separate elements of the predicate.

Giving to Section 5 (a) when read with subsectio (5) its normal grammatical construction and to th words used their plain, normal meaning, we submi that the principle of *ejusdem generes* is not appli cable here.

That by the use of the phrase "or contains an form of misrepresentation or deception, directly o by implication, with respect to such fur product o fur" Congress intended to outlaw misrepresentatio of price and of value of fur products and furs to th same extent as it outlawed advertisements whic failed to show or disclose the matters set forth in th other subsections of Section 5 (a) is supported by th legislative history of the Act.

At a hearing held before the Committee on Inter state and Foreign Commerce, House of Representa tives, 80th Congress, 2nd Session, on H. R. 3734, Mr O'Hara, sponsor of the Fur Act, inserted in th record (pp. 141–146) of the hearing numerous adver tisements which appeared in newspapers published in Chicago, Illinois. These advertisements are star tling in their similarity to petitions' advertisements appearing in the record of this case as Commission's Exhibits (Tr. R. 136–142). These advertisements make representations as to prices and savings, con taining among others the following representations "Here Are The Greatest Clearance Values Ever Offered On Fur Coats.," "Don't Miss This Rare Op portunity To Get The Fur of Your Lifetime At an Undreamed Of Price." and "Values Like These May Never Again Be Available At So Low a Price."

At a hearing before the Committee on Interstate and Foreign Commerce, House of Representatives, on May 11, 1949, Congressman O'Hara made the following statement:

> I might say that the purpose and intent of this legislation is to encourage and to bring about better business practices in all branches of the fur industry so as to provide the consumer with reasonable protection against unfair trade practices.
>
> I believe that it is highly desirable that this legislation should be passed, protecting the consumer, retailers, distributors, processors, dealers and producers from misnaming, misbranding, and deceptive or misleading advertising of fur and fur articles. (Report of hearings on H. R. 97 and H. R. 3755, before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 81st Congress, 1st session, p. 37.)

A representative of the Federal Trade Commission at a hearing before this same Committee, Thursday, May 12, 1949, in speaking of "Trade Practice Rules for the Fur Industry" as promulgated by the Commission June 17, 1938, had this to say:

> The shortcomings on those Rules are the same type of shortcomings that apply to the Federal Trade Commission Act in respect to the problems that are involved in this proposed legislation; namely, that the greatest evil in the situation that is sought to be corrected takes place at the point of ultimate sale to the consumer, where it is very damaging in its effect.

> Now, that sale in and of itself is generally in intrastate commerce, subsequently beyond the reach, the prompt reach at least of the jurisdiction of the Federal Trade Commission.
>
> Labeling, as I pointed out yesterday, will, in my opinion, thoroughly reach it. It has proved that it could be reached in other instances by the labeling process. (Report of hearings on H. R. 97 and H. R. 3755, before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 81st Congress 1st session pp. 55–56.)

The representative of the Commission was speaking of the Wool Products Labeling Act.

At a hearing held before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 81st Congress, 1st session, on H. R. 97 and H. R. 3755 (Report p. 194), Mr. Sadowski called the attention of the Committee to an item published by a fur merchant of Chicago, Illinois. It was an apology for some of the advertisements which were inserted in the record by Mr. O'Hara at a hearing before the Committee on April 7, 1948 (*supra,* p. 46).

Mr. Charles Gold, General Counsel, Master Furriers Guild of America, was testifying before the Committee at this time. Mr. Gold said that his organization has endeavored to stop that type of false claims of savings and have challenged them, criticised them, and have denounced them and that he now denounced them. Mr. Gold pointed out that Rule 29 of the Trade Practice Rules of the Fur Industry has condemned such advertisements, and that he did

not understand why this legislation was necessary to stop such advertisements when the Federal Trade Commission had the power to do so under Rule 29. Mr. Sadowski stated that he would ask a representative of the Federal Trade Commission, who was in the room, why the Trade Practice Rules are insufficient to protect the fur industry and the purchasers of fur from such advertisements and why the Commission thought labeling was necessary. The representative of the Commission stated that Trade Practice Rules were advisory only, of no legal effect, and although they had done much in correcting many of the practices of the fur industry, "unfortunately [the Commission is] curtailed, through jurisdictional limitations in reaching some of the worse offenders. That is our main reason for supporting supplemental legislation of this particular type." (Report of hearings on H. R. 97 and H. R. 3755, before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 81st Congress, 1st session, pp. 194–200.)

In a report submitted to the Senate from the Committee on Interstate and Foreign Commerce on February 5, 1951, the following statement appears:

> This bill has a twofold purpose: (1) To protect consumers and scrupulous merchants against deception and unfair competition resulting from the misbranding, false or deceptive advertising or false invoicing of fur products and furs, and (2) to protect our domestic fur producers against unfair competition. (Report No. 78, 82d Congress, 1st session, Cal. No. 80.)

At a hearing before the Committee on Interstat and Foreign Commerce, House of Representative 82d Congress, 1st session, on H. R. 2321, Mr. O'Har made the following statement:

> The abuses which this bill aims to cure ar very widespread. Attempts to eliminate thes abuses under the Federal Trade Commissio Act itself have failed. The Interstate and For eign Commerce Committee of the House wa unanimous in the belief that legislation is re quired to protect consumers of furs and fu products, and that in this case the pattern se so successfully by the Wool Products Labelin Act should be followed.
>
> The effect of this bill will be to requir honest, fair labeling and honest advertising, an will afford protection of a very substantial char acter, not only to the buying public but also t the industry and trades engaged in the fu business. * * * This legislation is imperativ to make it possible to adequately reach the evil in question. (Report of Hearings on H. R 2321, before the Committee on Interstate an Foreign Commerce, House of Representative 82d Congress, 1st session, p. 14.)

At a hearing held before this same Committee o April 20, 1951, a representative of the Federal Trad Commission made this statement:

> Mr. Gold has referred to the flood of compara tive price advertising and of our ability or lac of ability to handle comparative price case Those are probably the most difficult types o case to prosecute in the realm of false advertis ing. Where a merchant offers a product whic he says is reduced from $500 to $250, what doe

> that mean? That means that that man had that article or his flood at $500 and it was offered there for $500 and he now has reduced it to $250 * * *.
>
> Under the trade practice rules, Mr. Gold said he is very much in favor of our making those rules do what is intended in this bill. That is all well and good, but if there is no legal authority to do it, neither Mr. Gold nor his clients can do it, nor can we. All we can do is to get out some platitudes which are never effective against the unscrupulous merchants. (Report of hearings on H. R. 2321, before the Committee on Interstate and Foreign Commerce, House of Representatives, 82d Congress, 1st session, p. 161.)

From the above it is clear that Congress, in enacting the Fur Act, had before it for consideration advertisements containing false and misleading representations as to prices and values of fur products and furs. The failure of the Act to specifically refer to such misrepresentations is not here controlling. As the Commission in its opinion pointed out:

> "[I]f Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators." *Barr* v. *United States,* 324 U. S. 83, 90 (1945). Furthermore, statutory expressions are to be broadly construed within the limitations of their literal meaning and the ascertainable legislative intent. The plain meaning of the statute will prevail as long as it does not lead to absurd results or clash with

> policy behind the legislation. *U. S.* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 543 (1940).
>
> In the circumstances here, moreover, we are convinced that the Congress' goal was a legislative solution of the fur industry's major problems, including that of deceptive pricing representations and that, when enacting this legislation, its intention was to proscribe all deceptive advertising practices in connection with the sale of fur articles. (Tr. R. pp. 66-67.)

Evidence introduced at the hearings on this bill disclose that misrepresentation of prices and values occurred in the same advertisements which contained misrepresentations as to the physical and zoological characteristics of the fur product or fur. This mischief was rampant at the local or intrastate level and was affecting the economy and welfare of the Nation. It was an evil, as the legislative history indicates, which caused those who were interested to introduce in Congress the Fur Act. Misrepresentations as to prices and values are just as serious, if not more so, as misrepresentations of physical or zoological characteristics of the product.

The purchaser of a fur coat is as interested in its price and value as in the name of the fur used for its manufacture. The purchaser is "price and value conscious" to the same degree as "~~price~~ fur conscious" and just as gullible in both instances. Misrepresentations as to prices and values of fur coats and misrepresentations as to the furs used to produce the coat

usually appear in the same advertisement. The average purchaser of a fur coat is wholly ignorant not only of values but of furs, knowing nothing of either, is easily deceived by both. Fur advertising of the type here involved is perhaps, with one exception: drugs, the most reprehensible form of advertising to which the public is subjected. It would be inconceivable that Congress intended only to stop one of these evils as petitioners are here trying to have this Court decide. To hold that Rule 44 is beyond the authority of the Commission for the reason that Congress did not intend to stop the evil of misrepresentation as to the price and value would almost totally destroy the value of this piece of legislation. The Commission interpreted this Act, particularly subsection (5) of Section 5 (a) thereof, to outlaw price misrepresentation. This interpretation by the Commission is entitled to great weight, *Unemployment Compensation Commission of Alaska, et al.* v. *Aragon, et al.,* 329 U. S. 143, 153 (1946), and resulted in Rule 44 of the Rules and Regulations under the Fur Products Labeling Act. Since the effective date of this Rule, the Commission has issued 28 complaints, involving this Rule, all resulting in orders to cease and desist (Apdx. p. 63).

Based upon this interpretation, the Commission acting under the authority of Section 8 (b) of the Act promulgated Rule 44 of the Rules and Regulations under the Fur Products Labeling Act. In promulgating this Rule, the Commission was acting in its quasi legislative capacity and Rule 44, together

with all other Rules promulgated under the Act, i
a valid, substantive regulation with the full force an
effect of the statute itself. *Arizona Grocery Co.* v
Atchison, Topeka and Santa Fe Railway Co., et al
284 U. S. 370, 386 (1931).

We submit that from the stated purpose of th
Act, from the use of the unqualified phrase "fals
advertising" in the title to Section 3 and Section
(a), from the unambiguous language used in th
second part of the compound predicate of subsectio
(5) of Section 5 (a) and from the legislative history
Congress intended to and did declare that a fur prod
uct or fur shall be considered falsely or deceptivel
advertised if any advertisement contains a misrep
resentation as to prices and values. Any other inte
pretation or construction of the Fur Act would lea
to absurd, futile and ridiculous results plainly a
variance with the purpose of the legislation as
whole.

IV. CONCLUSION

It is submitted that the Commission's findings as t
the facts are fully supported by the record and tha
its order to cease and desist was properly issued. Th
Commission, therefore, prays that the petition for re
view be dismissed and that the Court affirm the Com

mission's order, and, pursuant to statute,[14] command petitioners to obey such order and comply therewith.

Respectfully submitted.

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[14] "To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission." Federal Trade Commission Act, Sec. 5 (c), 52 Stat. 113, 15 U. S. C. 45 (c).

SUPPLEMENTAL APPENDIX

APPENDIX

Pertinent Provisions of the Fur Products Labeling Act

MISBRANDING, FALSE ADVERTISING, AND INVOICING DECLARED UNLAWFUL

SEC. 3. (a) The introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this Act or the rules and regulations prescribed under section 8 (b), is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act.

(b) The manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this Act or the rules and regulations prescribed under section 8 (b), is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act.

(65 Stat. 175; 15 U. S. C. § 69a)

MISBRANDED FUR PRODUCTS

SEC. 4. For the purposes of this Act, a fur produ shall be considered to be misbranded—

(1) if it is falsely or deceptively labeled otherwise falsely or deceptively identified, or the label contains any form of misrepresen tation or deception, directly or by implicatio with respect to such fur product;

(2) if there is not affixed to the fur produ a label showing in words and figures plain legible—

(A) the name or names (as set forth in th Fur Products Name Guide) of the animal animals that produced the fur, and such qual fying statement as may be required pursua to section 7 (c) of this Act;

(B) that the fur product contains or is com posed of used fur, when such is the fact;

(C) that the fur product contains or is com posed of bleached, dyed, or otherwise arti cially colored fur, when such is the fact;

(D) that the fur product is composed whole or in substantial part of paws, tail bellies, or waste fur, when such is the fact;

(E) the name, or other identification issue and registered by the Commission, of one more of the persons who manufacture such fu product for introduction into commerce, intr duce it into commerce, sell it in commerce, a vertise or offer it for sale in commerce, transport or distribute it in commerce;

(F) the name of the country of origin of an imported furs used in the fur product;

(3) if the label required by paragraph (2) (A of this section sets forth the name or names of an animal or animals other than the name or name provided for in such paragraph.

(65 Stat. 177; 15 U. S. C. §69b)

FALSE ADVERTISING AND INVOICING OF FUR PRODUCTS AND FURS

SEC. 5. (a) For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—

(1) does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7 (c) of this Act;

(2) does not show that the fur is used fur or that the fur product contains used fur, when such is the fact;

(3) does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact;

(4) does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) contains the names or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur;

(6) does not show the name of the country of origin of any imported furs or those contained in a fur product;

(b) For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively invoiced—

(1) if such fur product or fur is not invoiced to show—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statements as may be required pursuant to section 7 (c) of this Act;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name and address of the person issuing such invoice;

(F) the name of the country of origin of any imported furs or those contained in a fur product;

(2) if such invoice contains the name or names of any animal or animals other than the name or names specified in paragraph (1) (A) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur.

(65 Stat. 178; 15 U. S. C. § 69c)

RULE 29.—*Requirements in Respect to Disclosure on Label.*

(a) The required information shall be set out on the label in a legible manner and in not smaller than pica or twelve (12) point type, and all parts of the required information shall be set out in letters of equal size and conspicuousness. All of the required information with respect to the fur product shall be set out on one side of the label and no other information shall appear on such side except the lot or style number and size. The other side of the label may be used to set out any non-required information which is true and non-deceptive and which is not

prohibited by the Act and Regulations, but in all cases the animal name used shall be that set out in the Name Guide.

(b) The required information may be set out in hand printing provided it conforms to the requirements of (a), and is set out in indelible ink in a clear, distinct, legible and conspicuous manner, Handwriting shall not be used in setting out any of the required information on the label. (16 CFR § 301.29)

RULE 44.—*Misrepresentation of Prices.*

(a) No person shall, with respect to a fur or fur product, advertise such fur or fur product at alleged wholesale prices or at alleged manufacturers cost or less, unless such representations are true in fact; nor shall any person advertise a fur or fur product at prices purported to be reduced from what are in fact fictitious prices, nor at a purported reduction in price when such purported reduction is in fact fictitious.

(b) No person shall, with respect to a fur or fur product, advertise such fur or fur product with comparative prices and percentage savings claims except on the basis of current market values or unless the time of such compared price is given.

(c) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being "made to sell for," being "worth" or "valued at" a certain price, or by similar statements, unless such claim or representation is true in fact.

(d) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being of a certain value or quality unless such claims or representations are true in fact.

(e) Persons making pricing claims or representations of the types described in subsections (a), (b),

(c) and (d) shall maintain full and adequate record disclosing the facts upon which such claims or repre sentations are based.

(f) No person shall, with respect to a fur or fu product, advertise such fur or fur product by th use of an illustration which shows such fur or fu product to be a higher priced product than the on so advertised.

(g) No person shall, with respect to a fur or fu product, advertise such fur or fur product as bein "bankrupt stock," "samples," "show room models, "Hollywood Models," "Paris Models," "Frenc Models," "Parisian Creations," "Furs Worn by So ciety Women," "Clearance Stock," "Auction Stock, "Stock of a business in a state of liquidation," o similar statements, unless such representations o claims are true in fact. (16 C. F. R. § 301.44).

PERTINENT PROVISIONS OF THE FEDERAL TRADE COMMISSION ACT

SEC. 5. (a) (1) Unfair methods of competition i commerce, and unfair or deceptive acts or practice in commerce, are hereby declared unlawful.

* * * * *

(6) The Commission is hereby empowered an directed to prevent persons, partnerships, or corpora tions, except banks, common carriers subject to th Acts to regulate commerce, air carriers, and foreig air carriers subject to the Civil Aeronautics Act o 1938, and persons, partnerships, or corporations sub ject to the Packers and Stockyards Act, 1921, excep as provided in section 406 (b) of said Act, from usin unfair methods of competition in commerce and un fair or deceptive acts or practices in commerce.

(66 Stat. 632, 15 U. S. C. 45 (a) (1), (45) (a) (6).

CASES INVOLVING RULE 44 (FUR PRODUCTS LABELING ACT) IN WHICH ORDERS TO CEASE AND DESIST HAVE BEEN ISSUED BY THE COMMISSION*

	Docket No.
Gould's Inc	6481
City Specialty Stores, Inc., d. b. a. Oppenheim-Collins and Franklin Simon	6502
LeAnn Fine Furs, Inc	6503
Mawson DeMany Forbes	6513
Buckspan's	6514
Nigbor Furs, Inc	6516
Sattler's, Inc	6517
N. L. Kaplan, Inc	6530
Beckman-Hammer Furs	6542
I. J. Fox, Inc	6558
Roslyn Furs, Inc	6562
R. H. Macy and Co., Inc	6568
Stein Brothers Fur Co	6586
Fred Benioff Co	6587
Ed Hamilton Furs, Inc	6159
Feuer Fur Company	6296
Al A. Rosenblat Co., Inc	6299
Einbender and The Vogue	6300
Parisian Fur Company	6301
Harry Kaye of Hackensack, Inc	6320
Denning-Golden Furs, Inc	6337
Leo Nelson, Inc	6341
H. J. Strauss Furs	6371
Martin-Balut Fur Factory	6379
Weinstein Fur Company	6415
Evans Fur Co	6439
Becker and Burns Furriers	6483
Vancouver Fur Factory	6509

*Decisions of the Commission have not been published in book form since June 30, 1954.

U. S. GOVERNMENT PRINTING OFFICE: 1957